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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

UNITED STATES OF AMERICA,

No. 5:23-CR-00021-JGB

Plaintiff,

v.

JASON EDWARD THOMAS CARDIFF,

**GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION TO COMPEL**

Date: March 10, 2025
Time: 2:00 p.m.
Courtroom: 1

Defendant.

Plaintiff United States of America, by and through its counsel of record, the Consumer Protection Branch of the United States Department of Justice and Trial Attorney Manu J. Sebastian, and the Acting United States Attorney for the Central District of California

1 and Assistant United States Attorney Valerie L. Makarewicz, hereby
2 submits this Opposition to Defendant's motion to compel extradition
3 files and communications.

4

5 Dated February 18, 2025: Respectfully submitted,

6

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Director
Consumer Protection Branch

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9 JOSEPH T. MCNALLY
Acting United States Attorney

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11 /s/
12 MANU J. SEBASTIAN
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant's motion to compel should be denied as he fails to provide any authority that requires the government to turn over extradition-related records or communications. Defendant's claim that an encounter with Irish law enforcement in Ireland, where he is a citizen and has a residence, violates his Fourth Amendment rights under the United States Constitution is meritless. Dkt. 200. "**Neither our Fourth Amendment nor the judicially created exclusionary rule applies to acts of foreign officials.**" United States v. Barona, 56 F.3d 1087, 1091 (9th Cir. 1995) (cleaned up) (emphasis added).

The government produced material over and above its obligations under Fed. R. Crim. Proc. 16, Brady, Giglio, and Jencks in response to the Defendant's previous discovery requests. The government will continue to produce material that it is obligated to produce up to and throughout the duration of the case. The government, however, does not have an obligation to produce any extradition-related documentation or communications when the Defendant has not been extradited, fails to provide any authority which requires the

¹ Defendant again misquotes an oral hearing transcript. Dkt. 200 at 4:8-9; see also Ex. 1, January 30, 2025 Hearing Transcript at 4-5. What Defendant has in quotation marks is not actually what was said at the hearing nor what was typed by the stenographer in the actual transcript.

1 government to produce such material, is in violation of his pretrial
2 release conditions, and is currently a fugitive in violation of
3 multiple orders of this Court.

4 **II. STATEMENT OF FACTS**

5 On January 31, 2023, a grand jury returned an indictment that
6 charged Defendant with Access Device Fraud, Aggravated Identity
7 Theft, and Obstruction. Dkt. 1.

8 In October 2023, the government submitted an extradition package
9 to Irish authorities with an arrest warrant for Defendant that was
10 issued on January 31, 2023. Ex. 1 at 4:21-22; Dkt. 1.

11 On November 26, 2023, Defendant was arrested at Los Angeles
12 International Airport when he returned to the United States from
13 Ireland. Ex. 1 at 4:23-24; see also Dkt. 7. On December 6, 2023,
14 Defendant was released on bond. Dkt. 21.

15 On October 29, 2024, the Court permitted Defendant to travel to
16 Ireland for fourteen nights. Dkt. 124. On November 20, 2024, the
17 Court permitted Defendant to extend his travel to Ireland for thirty
18 days. Dkt. 133. On December 20, 2024, the Court permitted Defendant
19 to extend his stay for another thirty days and ordered he return to
20 the United States by January 19, 2025. Dkt. 151.

21 On January 14, 2025, Irish authorities visited Defendant's
22 residence in Ireland. See Dkt. 200. Irish authorities spoke with
23 Defendant and left the residence shortly after arrival. Ex. 1 at 5:2-
24 6; Dkt. 200 at Ex. A ¶5. Defendant was not put in physical restraints
25 nor was he arrested.² Ex. 1 at 5:2-6; see also Dkt. 200. at Ex. A.

27 ² Defendant did not claim he was arrested in his previous filings. In
28 fact, Defendant was clear that he was not arrested as he asserted
Irish authorities "wanted to arrest him" and informed him that "he
(footnote cont'd on next page)

¶4. Irish authorities did not search Defendant's person nor his residence. See Dkt. 200. at Ex. A. ¶4. Defendant permitted Irish authorities to enter his residence so that he could show them the Court's orders. Id. United States law enforcement was not present at any time during the encounter. See generally Dkt. 200. The undersigned did not direct Irish authorities to advance the October 2023 extradition request on January 14, 2025. Ex. 1 at 4:24-25.

That same day, Defendant filed an ex parte application to allow him to remain in Ireland for an additional 120 days, which the Court denied. Dkts. 162, 165. The Court confirmed that Defendant must return to Texas no later than January 19, 2025. Dkt. 165.

On January 16, 2025, Defendant filed a motion for reconsideration, which the Court denied. Dkts. 166, 171. The Court again ordered Defendant to return to Texas no later than January 19, 2025. Dkt. 171. On January 18, 2025, Defendant requested a modification of his reporting date, which the Court denied. Dkts. 172, 176.

Defendant failed to return to the United States on January 19, 2025, and remains in Ireland in violation of the Court's orders. See Dkt. 178, 200. On February 5, 2025, the Court declared Defendant a fugitive and indicated that it would issue a warrant for his arrest. Dkt. 196.

III. LEGAL STANDARDS

A. The Fourth Amendment

The Fourth Amendment protects United States citizens from unreasonable searches and seizures by the United States government.

could either be arrested and go with them or he could surrender his passports." Dkt. 166 at 6:4-9.

1 U.S. Const. amend. IV. For Fourth Amendment protections to attach to
2 instances involving foreign law enforcement in a foreign country, the
3 Defendant must show that United States agents' participation in the
4 foreign investigation was "so substantial that the action is a joint
5 venture between United States and foreign officials."³ United States
6 v. Barona, 56 F.3d 1087, 1092 (9th Cir. 1995).

7 "Formalized collaboration between an American law enforcement
8 agency and its foreign counterpart does not, by itself, give rise to
9 an 'agency' relationship between the two entities sufficient to
10 implicate the Fourth Amendment abroad." United States v. Lee, 723
11 F.3d 134, 137 (2d Cir. 2013); see also Fisher v. United States, 779
12 A.2d 348, 354 (D.C. 2001) ("Mere notification of the potential
13 existence of a criminal in another police's jurisdiction is not
14 enough to create [an agency] relationship") (quoting Alvarado v.
15 State, 853 S.W.2d 17, 18 (Tex. Crim. App. 1993)). Even if an agency
16 relationship is created, compliance with foreign law alone determines
17 whether the search or seizure violated the Fourth Amendment. Barona,
18 56 F.3d at 1093 n.1.

19 If the Court determines the search or seizure did not comply
20 with foreign law, the sole remedy available is exclusion of the
21 evidence collected. Id.; see also United States v. Calandra, 414 U.S.
22 338, 348 (1974) ("The exclusionary rule. . . is a judicially created
23 remedy designed to safeguard Fourth Amendment rights generally

24

25 ³ "[T]he Fourth Amendment could apply to raids by foreign officials
26 only if Federal agents so substantially participated in the raids so
as to convert them into joint ventures between the United States and
27 the foreign officials." United States v. Rose, 570 F.2d 1358, 1362
28 (9th Cir. 1978) (citing Stonehill v. United States, 405 F.2d 738, 743
(9th Cir. 1968), cert. denied, 395 U.S. 960, reh. denied, 396 U.S.
870 (1969)).

1 through its deterrent effect, rather than a personal constitutional
2 right of the party aggrieved."). "Standing to invoke the exclusionary
3 rule is confined to situations where the Government seeks to use such
4 evidence to incriminate the victim of the unlawful search or
5 seizure." Id. citing Brown v. United States, 411 U.S. 223 (1973).

6 However, "[w]e held as long ago as 1975 that information
7 furnished to American officials by foreign police need not be
8 excluded simply because the procedures followed in securing it did
9 not fully comply with our nation's constitutional
10 requirements." United States v. Getto, 729 F.3d 221, 228 n.7 (2d
11 Cir. 2013) (citing United States v. Cotroni, 527 F.2d 708, 711 (2d
12 Cir. 1975)). This is so even when "the persons arrested and from whom
13 the evidence is seized are American citizens." Stowe v. Devoy, 588
14 F.2d 336, 341 (2d Cir. 1978). Significantly, in this context, the
15 Fourth Amendment's exclusionary rule does not serve the deterrence
16 purpose for which it was designed because "the actions of an American
17 court are unlikely to influence the conduct of foreign police."
18 United States v. Valdivia, 680 F.3d 33, 51 (1st Cir. 2012) quoting
19 United States v. Hensel, 699 F.2d 18, 25 (1st Cir. 1983) (quotation
20 omitted).

21 **B. Federal Rule of Criminal Procedure 16**

22 Pursuant to Rule 16 of the Federal Rules of Criminal Procedure,
23 the government must permit the defendant to inspect and copy, among
24 other things, papers and documents that are in the government's
25 possession, custody, or control and: (i) the item is material to
26 preparing the defense; (ii) the government intends to use the item in
27 its case-in-chief at trial; or (iii) the item was obtained from or
28 belongs to the defendant.

1 "Rule 16 does not authorize fishing expeditions." United States
2 v. Sullivan, No. 17-00104-JMS-KJM, 2019 WL 8301178, at *1 (D. Haw.
3 December 2, 2019). To receive discovery under this Rule, Defendant
4 "must make a threshold showing of materiality, which requires a
5 presentation of facts which would tend to show that the Government is
6 in possession of information helpful to the defense." United States
7 v. Doe, 705 F.3d 1134, 1150 (9th Cir. 2013); see also United States v.
8 Little, 753 F.2d 1420, 1445 (9th Cir. 1984) (To secure discovery under
9 Rule 16(a)(1)(E), the defendant carries the burden of demonstrating
10 materiality.); see also United States v. Budziak, 697 F.3d 1105, 1111
11 (9th Cir. 2012) ("A defendant must make a 'threshold showing of
12 materiality' in order to compel discovery pursuant to Rule
13 16(a)(1)(E)." (citation omitted)).

14 "The **mere suspicion** that information will prove helpful **is**
15 **insufficient** to require disclosure." United States v. Sai Keung Wong,
16 886 F.2d 252, 255-57 (9th Cir. 1989) (emphasis added).

17 C. Brady

18 Under Brady v. Maryland, the government has an obligation to
19 provide exculpatory evidence to a criminal defendant. United States
20 v. Blanco, 392 F.3d 382, 387 (9th Cir. 2004). Evidence is exculpatory
21 if it tends to prove Defendant's innocence. United States v. Bruce,
22 984 F.3d 884, 895 (9th Cir. 2021) quoting Amado v. Gonzalez, 758 F.3d
23 1119, 1134 (9th Cir. 2014). "Suppression by the prosecution of
24 evidence favorable to an accused upon request violates due process
25 where the evidence is material either to guilt or to punishment."
26 Brady v. Maryland, 373 U.S. 83, 87 (1963). "The exculpatory value of
27 an item of evidence is not 'apparent' when the evidence merely 'could

1 have' exculpated the defendant." United States v. Drake, 543 F.3d
2 1080, 1090 (9th Cir. 2008) (emphasis in original).

3 **IV. Argument**

4 **A. The Fourth Amendment Does Not Apply**

5 The Fourth Amendment does not protect the Defendant from actions
6 by Irish authorities in Ireland. Barona, 56 F.3d at 1091 (9th Cir.
7 1995). Even if the Fourth Amendment did apply, Defendant fails to
8 request any actual relief permitted by the Fourth Amendment.

9 Defendant makes a general claim that he is protected under the
10 Fourth Amendment from searches and seizures while he is in Ireland.
11 The case law that he cites is distinguishable as it only discusses
12 U.S. law enforcements' direct actions in foreign countries, which is
13 not the case here. Defendant fails to show that United States law
14 enforcement participated in any way in his encounter with Irish law
15 enforcement on January 14, 2025, let alone participated in a way that
16 was "so substantial" that the encounter was a joint venture between
17 the United States and Irish officials. See Barona, 56 F.3d at 1092;
18 see also United States v. Emery, 591 F.2d 1266, 1268 (9th Cir. 1978).

19 As defendant admits, Irish officials acted on an extradition
20 package that was submitted to them in October 2023. Dkt. 200 at ¶9.
21 Defendant fails, however, to provide any evidence of U.S. law
22 enforcement involvement in his encounter with Irish law enforcement
23 other than his own self-serving affidavit where he claims the U.S.
24 consulate requested his arrest. Id. Defendant provides no actual
25 evidence of this assertion, and even if he had such evidence, it does
26 not establish participation that is "so substantial" that the
27 encounter was a joint venture between U.S. and Irish authorities.

Defendant is currently a fugitive from justice who is actively disobeying multiple court orders, and his motion seeks information about an extradition request that is not discoverable. See Dkt. 196. Defendant was not restrained or arrested. Ex. 1 at 5:2-6; see also Dkt. 200. at Ex. A. ¶4. No evidence was collected from Defendant and turned over to the U.S. government by the Irish law enforcement. See generally Dkt. 200. Defendant fails to show how the Fourth Amendment applies to this scenario. Defendant also fails to request any actual relief permitted by the Fourth Amendment. Therefore, Defendant's motion to compel should be denied.

B. Extradition-related Records and Communications are not Subject to Rule 16 nor Brady

The extradition-related documents and communications are not subject to production under Fed. R. Crim. P. 16 nor Brady as nothing from the October 2023 extradition request is material to preparing a defense to access device fraud, aggravated identity theft, or witness tampering. The government does not intend to use any material from Defendant's January 14, 2025 encounter with Irish authorities in its case-in-chief at trial. No evidence was collected from Defendant on January 14, 2025, by Irish authorities nor was anything belonging to Defendant taken by Irish authorities that is in the United States's possession, custody, or control. See generally Dkt. 200.

Defendant fails to show how extradition-related records and
communications are material to his defense or exculpatory.
Consequently, his motion to compel should be denied.

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1 **C. Defendant is a Fugitive and Should Not Be Permitted to File**
2 **Discovery Motions While He Actively Disobeys Court Orders.**

3 As previously cited by the government, pursuant to the fugitive
4 disentitlement doctrine, the Court may bar the defendant from having
5 his motion to compel considered. Dkt. 184; See United States v. Chung
6 Chung Yeh, No. CR 10-00231-WHA, 2013 WL 2146572, at *2. (N.D. Cal.
7 May 15, 2013) “[T]hose who have fled federal jurisdiction should not
8 be entitled to avail themselves of the benefits of the court system.”
9 Id.: see also United States v. Besarovic, No. 2:12cr-0004-APG-GWF,
10 2017 WL 6762479, at *2 (D. Nev. Oct. 5, 2017), report and
11 recommendation adopted, No. 2:12-CR-0004-APG-GWF, 2018 WL 272173 (D.
12 Nev. Jan. 2, 2018).

13 Since Defendant is currently a fugitive who is in violation of
14 multiple court orders, the Court may deny Defendant’s motion to
15 compel as he should not be permitted to use the benefits of the court
16 system while he himself evades the authority of the Court.

17 **III. CONCLUSION**

18 Defendant’s motion to compel should be denied as the Fourth
19 Amendment does not apply to actions by foreign law enforcement in a
20 foreign country nor does it compel the government to produce
21 extradition records. In addition, Defendant’s motion should be denied
22 as the extradition records he seeks are not subject to the
23 government’s discovery obligations under Rule 16 or Brady in this
24 case.